THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.13841 of 2007

% 07.08.2007

Between:

K. Bharathi and others

…Petitioners

And

The State of Andhra Pradesh,
Rep. by its Secretary, Housing (HB) Department,
Hyderabad, and others.

…Respondents

! COUNSEL FOR PETITIONERS: M/s S. Udayachal Rao,

^ COUNSEL FOR RESPONDENTS: G.P. for Assignments

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> Head Note:

? CITATIONS:

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ORDER:

The petitioners were granted house site pattas over an extent of 33.33 sq. yards, each, in T.S.No.4/1, Block-M, of Ward No.47, Nampally Mandal, Hyderabad, in the year 1995. That area was covered by notification dated 12-12-1991, issued under Section 3 of the A.P. Slum Improvement (Acquisition of Lands) Act, 1956 (for short '*the Act*').

Recently, the Government allotted an extent of 5117.68 sq. yards of land, in favour of Indian National Congress Party, vide G.O.Ms.No.76, dated 25-11-2005. This land included the plots, that were assigned to the petitioners. Apprehending eviction from the land, petitioners filed W.P.No.25905 of 2005. The respondents filed a counter-affidavit, stating that they would not dispossess the petitioners, except by following the procedure, prescribed by law. The writ petition was disposed of, on 19-12-2006, duly recording the undertaking given by the respondents. This was followed by another writ petition, being W.P.No.499 of 2007. Almost on the same terms, that writ petition was also disposed of, on 08-02-2007.

The Collector, Hyderabad, the 4th respondent herein, issued show cause notices dated 21-06-2007, to the petitioners, requiring them to explain as to why the pattas granted to them shall not be

cancelled. It was pointed out that, irregularities have taken place in the course of granting pattas, that too, by an Authority, not vested with the power. The petitioners challenge the show cause notices. They submit that the notices are as vague as they could be, and the allegation, as to misrepresentation, is absolutely without any basis. They contend that, in spite of their best efforts, they cannot make any sensible representation, in response to the show cause notices. Their further contention is that, the notification issued under the Act, is still in force, and as long as the same stands,
the question of the land being resumed, that too, for allotment
to a political party; does not arise.

On behalf of the respondents, 1, 3, 4 5, and 6, a counter affidavit is filed. It is stated that the land in question belongs to the A.P. Housing Board, the 2nd respondent, and on a mistaken impression, the Revenue Divisional Officer, Hyderabad,
the 5th respondent, granted pattas to the petitioners. It is urged that the notification issued under the Act, is also untenable, since the owner of the land was not put on notice. It is admitted that the land of the petitioners is proposed to be handed over to the Indian National Congress.

Heard the learned counsel for the petitioners and learned Government Pleader for Assignment.

It is a matter of record, that the petitioners were granted
D-Form pattas, in respect of 33.33 sq. yards, each, way back in the year 1995. Constructions are said to have been made thereon,
by the respective allottees. Prior to this allotment, the Government issued notification under Section 3 of the Act. With that, the land assumes, totally a different character. Unless any notification is issued, cancelling the one, dated 12-12-1991, the land cannot be

taken away, from the purview of that Act.

The 1st respondent issued G.O.Ms.No.76, dated 25-11-2005, allotting an extent of 5117.68 sq.yards in favour of Indian National Congress Party. This land, however, includes an extent of 1153.9 sq. yards, which was allotted to the petitioners. The respondents have categorically admitted this. It is not known as to how the 1st respondent has allotted the land, of 1153.9 sq. yards, without either cancelling the pattas, granted in favour of the petitioners, and without neutralizing the proceedings, that were taken place under the Act. Whatever may be the legality or otherwise of the rest of the land, allotted under G.O.Ms.No.76, the extent of 1153.9 sq. yards ought not to have been allotted, through that G.O., as long as the assignment in favour of the petitioners, as well as the notification under the Act remained intact. That, however, is a different aspect.

The show cause notices present an interesting reading. They are very brief, and precise, and read as under:

> "1) On verification, the D-Form Patta issued to Sri K.Bharathi, W/o. Babu Rao, on mistaken fact, owing to misrepresentation and in excess of the limits of the authority delegated to the assignment officer which is liable for cancellation as recommended by the Revenue Divisional Officer, Hyderabad division in the reference 1st cited.
>
> 2) However, in the event of cancellation of Patta, keeping in view of your Socio-economic status and other relevant factors into consideration, a Residential Flat is allotted in a Government housing scheme in Nampally Mandal for immediate occupation.
>
> 3) Therefore, you are hereby called upon to show cause immediately as to why Pattas irregularly issued should not be cancelled, and further action taken thereon. Hence this notice".

From a perusal of the show-cause notice, it is evident that the

4th respondent cited three grounds for proceeding against the petitioners. According to him, the pattas granted in favour of the petitioners are vitiated by;

a) mistake of fact;
b) misrepresentation; and
c) exceeding the limits of authority by the officer, who granted pattas.

It must be noted that the factual and legal back ground for each of the grounds is different and distinct, and the 4th respondent was under obligation to state them, with the required amount of clarity and precision.

Mistake of fact is something, which occurs at the end of the person, who undertakes the exercise, leading to legal obligations. It occurs either on account of his inability to appreciate the matter from the proper perspective, or his not being conversant with the state of affairs. The net result is that he takes a set of facts for the other, and proceeds as though there was sufficient factual basis for him, to act. Whenever mistake is invoked, as a ground to annul the benefit that had accrued to an individual, certain things are required to be stated clearly. Firstly, the facts and circumstances that are necessary to confer the benefit on an individual must be enlisted. Secondly, it must be shown that a set of facts, different from those required, existed. Lastly, it must be revealed that the person who conferred rights on another, took the otherwise insufficient and irrelevant facts and circumstances, as those that are mandated for conferring such rights. The lapse, if any, in such cases, would be that of the one, acted on his own, and nothing can be attributed to the person who is conferred with the benefit, or right.

Misrepresentation, on the other hand, stands on a totally different footing. It occurs when a person, with an objective of deriving benefit, which he is not otherwise entitled to, falsely represents to another that he possessed the requisite qualifications or legal status for being conferred the benefit and the latter, in turn, acts upon such misrepresentation and confers the benefit on the former. Here again, the facts that were needed to exist and the otherwise untenable facts, which were misrepresented, must be stated with the required amount of clarity. Apart from being denied the benefit, the person guilty of misrepresentation would also be liable to be proceeded under the relevant provisions of IPC.

Exceeding the limits of authority is purely in the realm of law. If the law confers the power on any particular authority, he alone is competent to exercise it, and not any other, particularly his inferiors. Whenever this ground is cited to annul a set of proceedings, the provision under which the power is conferred, must be cited, and it must be stated as to how the authority, who exercised the power, had exceeded the limits.

Even if any one of the grounds, referred to above, is proved, it would entail in cancellation of the pattas granted to the petitioners. That being the case, the statement of grounds and the basis for the allegation, were required to be stated with clarity and were not to be left for being guessed. The very purpose of issuing a show-cause notice to an affected party is to inform him of the grounds on which he is sought to be proceeded against, and to enable him to present his version of the matter. If a show-cause notice is issued with vague and abstract statements, the very purpose of its issuance would be defeated, and the entire process would be reduced to an empty

formality. This, in turn, would tell upon the compliance, or the failure of it, with the principles of natural justice. Mere employing the expressions, such as '*mistaken fact*' '*misrepresentation*' and '*exceeding limits of authority*', without supplementing the necessary facts in support of the respective grounds, would not serve the purpose. No one would be able to deal with such expressions, howsoever learned he may be, unless the relevant facts were stated. The plight of a slum dweller can easily be imagined.

This serious lapse appears to have taken place on account of the fact that required amount of attention was not paid to the matter. With the publication of notification under the Act, and grant of pattas in favour of the petitioners, valuable rights have accrued to them. They can be taken away only through a process, which accords with settled principles of law.

Though this Court would be loath, to interfere with the show cause notices, in the facts and circumstances, referred to above; there is no alternative, except to set aside the show cause notices. At the same time, it should be left open to the concerned respondents to initiate proceedings against the petitioners,
in accordance with law.

For the foregoing reasons, the writ petition is allowed, setting aside the impugned show cause notices, and it is left open to the respondents, to issue fresh show cause notices, in accordance with law, duly pointing out specific reasons, and indicating the relevant provisions of law.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.07-08-2007.

Note: L.R copy to be marked.

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